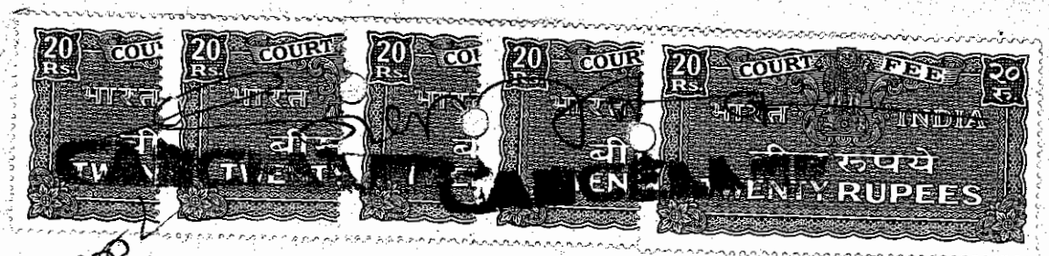

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

W.P. No. 2462 of 1997.

PETITIONER : Shrimati Sila Dubey widow of late Shri Lavakush, "Dai", Municipal Corporation Aushdhalaya, Durg.

VERSUS

RESPONDENTS : 1. Municipal Corporation, Durg, through the Commissioner.

2. The State of Madhya Pradesh through the Secretary Local Self Government, Madhya Pradesh, BHOPAL (M.P.).

3. The Mayor Municipal Corporation, Durg.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(64)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 2462 OF 1997

Petitioner : Shrimati Sila Dubey

Versus

Respondents : Municipal Corporation, Durg, through the Commissioner & others

---

Present:

Mr. Ajay Shrivastava, counsel for the petitioner.

Ms. Sharmila Shinghai, counsel for the respondents No. 1 and 3.

Mr. V.V.S. Murthy, Deputy Advocate General with Ms. Sunita Jain, Panel lawyer for the respondent No. 3/State

---

ORDER

(Passed on 8th day of February, 2007)

1. Learned counsel appearing for the petitioner submits that the petitioner was appointed as daily wages worker in the year 1980. Thereafter, by resolution dated 10.5.87 (Annexure P/1-A), passed by the Standing Committee of the respondent-Corporation, Durg, the services of the petitioner was regularized on daily wages basis. Thereafter, regular pay scale was granted to the petitioner vide order dated 28.2.1996, which was cancelled subsequently, by the order dated 30.5.1996 (Annexure P/5) and the petitioner was granted daily wages as muster roll employee.

2. By this petition, the petitioner has prayed for a direction to quash the order dated 30.5.1996 (Annexure P/5) and to regularize appointment of the petitioner w.e.f. 10.5.87.

(65)

3. Ms. Sharmila Shinghai, learned counsel appearing for the respondents No. 1 and 3 would submit that the resolution dated 10.5.87 to regularize the service of the petitioner on the post of 'Dai' could not be given effect to as there is no post of 'Dai'. Order dated 28.2.1996 appointing the petitioner on the post of Peon was given as no post of 'Dai' was available, with the condition to submit service book of earlier service, date of birth certificate, medical certificate and character certificate. Instead of date of birth certificate, an affidavit to that effect was filed. Despite repeated reminders, the petitioner has not submitted her date of birth certificate till date. The petitioner submitted a school leaving certificate, which gave different date of birth, wherein the date of birth was mentioned as 17.10.39 of Shiv Dulari, Daughter of Shri Ganesh Prasad. In the affidavit of the petitioner, the petitioner had given the date of birth as 8.7.1943. Thus, the petitioner submitted contrary dates of birth. Accordingly, the order of appointment dated 28.2.1996 (Annexure P/1) was cancelled vide order dated 30.5.1996. Learned counsel appearing for the respondents No. 1 and 3 would further contend that the appointment of the petitioner was on daily wages basis, not in accordance with law.

4. Be that as it may, on perusal of the pleadings and papers, it appears that the appointment of the petitioner was not in accordance with the constitutional scheme of employment by inviting applications form all the eligible candidates. The petitioner had further failed to point out from any document that the petitioner's appointment was made after following due process of law in accordance with the constitutional scheme of employment. Thus, the petitioner has no right to the post.

(66)

5. This Court, vide order dated 23rd day of January, 2007, passed in Writ Petition (s) No. 1983 of 2005 (Ashish Kumar Das vs. State of Madhya Pradesh (now Chhattisgarh) and others), relying on decisions of the Supreme Court in the cases of **State of M.P. and others vs. Yogesh Chandra Dubey and others**[1] and **M.P. Housing Board and another vs. Manoj Shrivastava**[2], held that the appointment de-hors the constitutional scheme of employment is not validated by subsequent regularization.

6. In view of the above stated reasons, the appointment of the petitioner is not a valid appointment as she has no right to the post.

7. As a result and in view of the abovementioned reasons, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

---

1. (2006) 8 SCC 67
2. (2006) 2 SCC 702